



# The Attorney General of Texas

December 31, 1982

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An Equal Opportunity/  
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Open Records Decision No. 343

Re: Hospital emergency room  
daily log giving patients name  
and diagnosis

Gentlemen:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the public availability of a hospital emergency room daily log and ambulance activity reports maintained by an emergency medical service.

Northwest Texas Hospital is operated by the Amarillo Hospital District. A reporter has requested access to the hospital's daily log, which consists of the patient's name, time in and out, disposition, name of physician, and diagnosis/complaint. Mr. Kinney states that the daily log gives a brief summary of the patient's admittance. It apparently is not prepared by a physician and therefore the confidentiality provisions of the Medical Practice Act are not applicable. V.T.C.S. art. 4495b, §5.08; Attorney General Opinion MW-381 (1981). He contends that such information is excepted from disclosure by section 3(a)(1), as "information deemed confidential by law," in this case, a constitutional or common law right of privacy. In Open Records Decision No. 262 (1980), we said that most information contained in reports filed by a municipally operated emergency medical service is available to the public. See also, Open Records Decision Nos. 258, 237 (1980). The opinion noted, however, that certain information therein would ordinarily be excepted by a constitutional or common law right of privacy:

Information about a patient's injury or illness might raise... a claim [of privacy] if it relates... to a 'drug overdose,' 'acute alcohol intoxication,' 'obstetrical/gynecological' illness, 'convulsions/seizures,' or 'emotional/mental distress.' When the injury or illness falls within a protected category, we do not believe such information should be released.

Open Records Decision No. 262 did not purport to furnish an exhaustive list of illness or injury information excepted by section 3(a)(1). A constitutional right of privacy will generally exist if the information at issue relates to marriage, procreation, contraception, family relationships or child rearing and education. Paul v. Davis, 424 U.S. 693 (1976). The doctrine of common law privacy, on the other hand, excepts any highly intimate or embarrassing facts about a person such that disclosure would be "highly objectionable to a person of ordinary sensibilities." Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 683 (Tex. 1976). You should in the first instance determine whether any "diagnosis/complaint" information listed on the daily log is encompassed within the standards for either constitutional or common law privacy.

The same requestor also seeks access to ambulance activity reports maintained by Amarillo Medical Service [hereinafter AMS]. Mr. Baird contends that AMS is not a "governmental body" for purposes of the Open Records Act. Section 2(1) of that statute defines "governmental body" for purposes of the Open Records Act. Section 2(1) of that statute defines "governmental body," inter alia, as:

(F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof.

You indicate that AMS is a private, non-profit corporation which, on October 28, 1980, entered into an agreement with the Amarillo Hospital District to furnish emergency medical services, including transportation, to persons using district facilities. The agreement requires AMS to perform specific duties, and provides that AMS shall receive "each month a sum equal to the differences between cash receipts and approved operating expenditures of the ambulance service."

In Open Records Decision No. 228 (1979), we considered whether the North Texas Commission, a private, non-profit corporation organized to promote the economic interest of the Dallas-Fort Worth metropolitan area, was a "governmental body" under the Open Records Act. The city of Fort Worth had agreed to pay the commission \$80,000 per year for three years, but the contract did not impose "a specific and definite obligation on the commission to provide a measurable amount of service in exchange for a certain amount of money." The opinion determined that the city of Fort Worth paid its funds to the commission for its "general support" rather than in "specific payment for specific measurable services." Accordingly, the opinion found that the North Texas Commission was "supported... in part by public

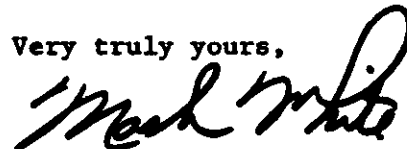
Mr. Sterling E. Kinney  
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funds" and was therefore a "governmental body" under the Open Records Act.

In Open Records Decision No. 228, the agreement at issue "failed to provide adequate consideration flowing to the political subdivision, and the public funds passing to such entity, although in the possession of private hands, retained their character as public funds." Open Records Decision No. 302 (1982). Likewise, in Open Records Decision No. 302, we held that the Brazos County Industrial Foundation, as the recipient of an unrestricted grant of \$48,000 from the city of Bryan, was also "supported... in part by public funds," and was, hence, a "governmental body" for purposes of the Open Records Act.

The agreement between AMS and the Amarillo Hospital District, on the other hand, imposes upon AMS a definite obligation "to provide a measurable amount of service in exchange for a certain amount of money." In our opinion, funds paid to AMS represent "specific payment for specific measurable services." As a result, we do not believe that AMS may fairly be said to be "supported in whole or in part by public funds." Thus, since AMS is not a "governmental body" under the Open Records Act, its ambulance activity reports in its custody need not be disclosed. We caution, however, that such reports may be public information in the custody of the Amarillo Hospital District.

Very truly yours,



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